

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

MELISSA WHEELER,
Plaintiff,

NO. CIV. S 03-2090 MCE GGH

v.

ORDER

CSK AUTO, INC., and DOES 1
through 100, inclusive,
Defendants.

-----oo0oo-----

On August 24, 2005, after previously filing a similar motion that was improperly noticed, Larry Schapiro, Plaintiff's counsel in this matter, filed a Notice of Motion for Relief from Entry of Judgment pursuant to Federal Rule of Civil Procedure¹ 60(b). In that Notice of Motion, which is now before the Court, attorney Schapiro states that he was unable to timely oppose Defendant CSK Auto's Motion for Summary Judgment, which ultimately was granted on August 10, 2005, because of his

¹Unless otherwise noted, all further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure.

1 "physical ailments". While Schapiro goes on to state that those
2 infirmities are "noted with more particularity" in a concurrently
3 filed declaration, no such declaration was submitted to the
4 court. In addition, the Notice of Motion also references a
5 supporting memorandum of points and authorities which was also
6 not filed.

7 On September 9, 2005, defense counsel Mark Van Brussel filed
8 a declaration, in response to Plaintiff's Notice of Motion, which
9 confirmed that the supporting papers referenced in Plaintiff's
10 Notice of Motion were never provided to him. Mr. Van Brussel
11 goes on to state that he called attorney Schapiro about this
12 omission. According to defense counsel, Schapiro advised him
13 that he had not prepared any additional papers and asked for an
14 extension of time to do so. Mr. Van Brussel declined the request
15 for an extension. No additional papers have been filed by
16 attorney Schapiro since that time. In addition, Mr. Schapiro has
17 taken no steps to either continue this motion or to remove it
18 from the Court's calendar.

19 Plaintiff's motion as constituted includes no facts or
20 argument to support any claim that the judgment entered herein be
21 vacated pursuant to Rule 60(b). The motion is accordingly
22 DENIED.²

23 Under the circumstances counsel for the defense has
24 requested that sanctions be imposed on attorney Schapiro for
25 filing a patently untenable motion. Rule 11 makes every
26

27 ²Because oral argument would not be of material assistance,
28 this matter was deemed suitable for decision without oral
argument. E.D. Local Rule 78-230(h).

signature on a pleading, written motion or other paper a certification of the merits of the document. Rule 11 authorizes sanctions to, *inter alia*, deter baseless filings made without factual foundation. Zaldivar v. City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986). The award of such sanctions are within the Court's discretion. Fed. R. Civ. P. 11(c).

Given the utter lack of any substantiation for the instant motion, and attorney Schapiro's abject failure to remedy the situation even after the shortcomings of his motion were expressly brought to his attention by opposing counsel, the Court does conclude that sanctions are in order for defense counsel having to respond to the motion. While attorney Van Brussel asks for a total of \$756.00 for time expended for that purpose (consisting of 2.4 hours of time at a discounted hourly rate of \$315.00), in the Court's view that amount is excessive given the circumstances of this motion. Attorney Schapiro shall pay the sum of \$250.00 in sanctions to Mr. Van Brussel and his firm, Seyfarth Shaw LLP. Those sanctions shall be remitted not more than ten (10) days following the date of this Order.

IT IS SO ORDERED.

DATED: September 28, 2005



MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE